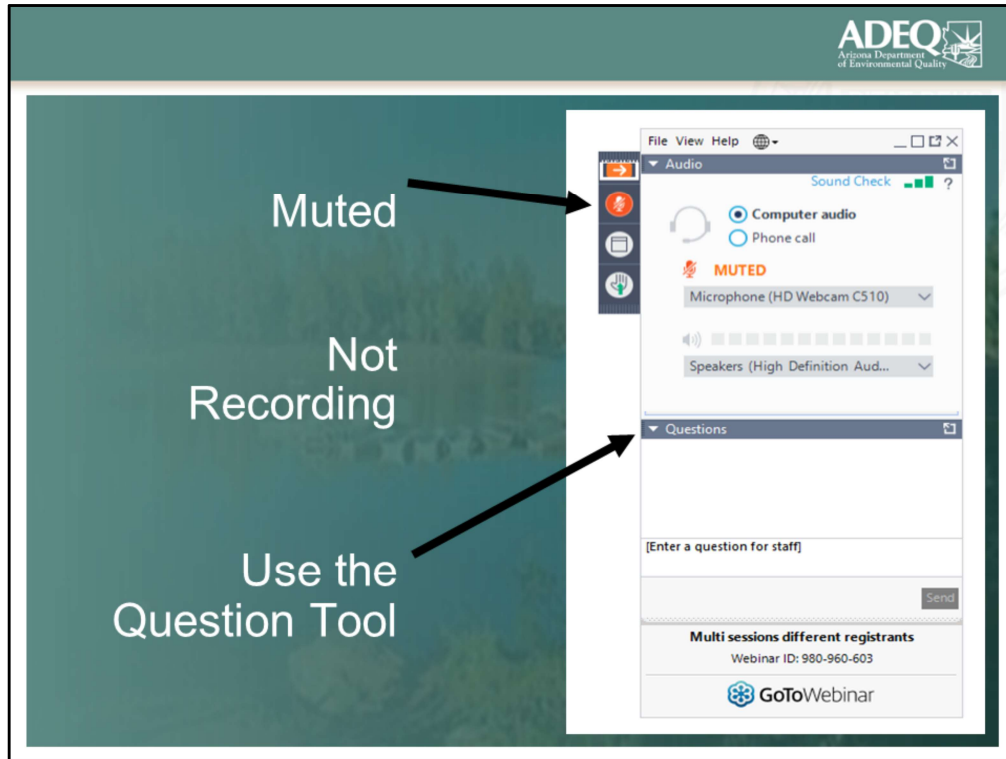


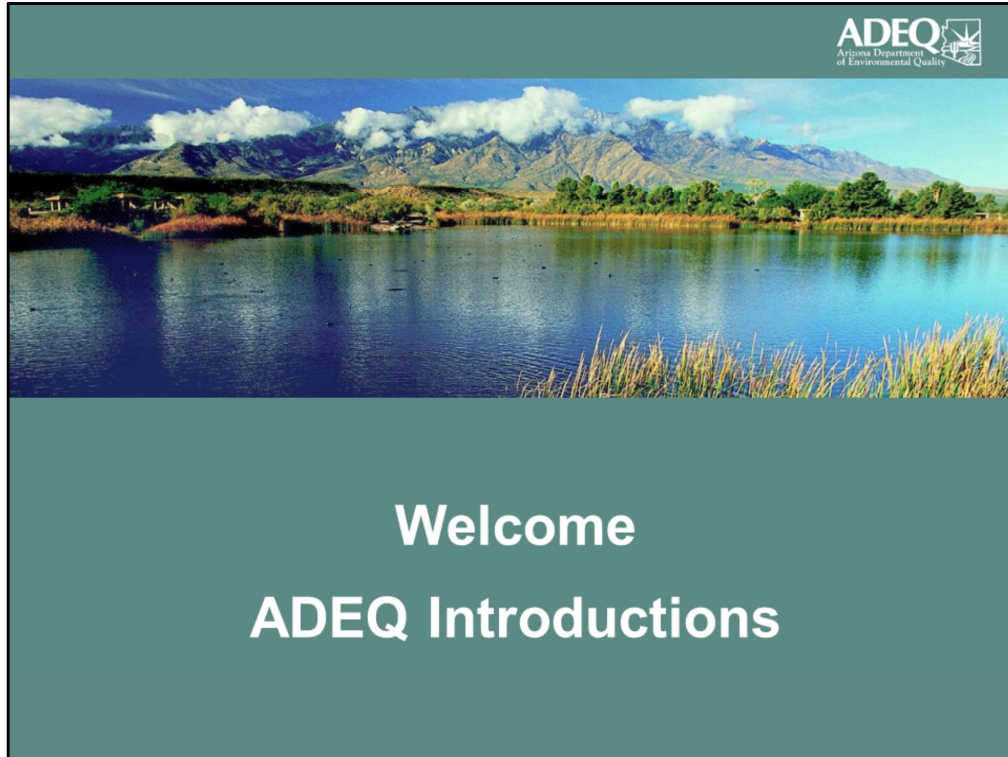
**Please register for Stakeholder Meeting on Sep 29, 2021  
2:00 PM at:**

**<https://attendee.gotowebinar.com/register/5391762448224546830>**



## David Lelsz

- Good afternoon everyone and welcome to this webinar on Arizona's Surface Water Protection Program
- My name is David Lelsz and I am the Program Manager for the new Program
- Let's have a brief on the Got To Meeting Tools we are using today!
  - Join Muted
  - Not recording; although the presentation and question log from the meeting will be posted on our website, likely within 48 hours of the session



**David Lelsz**

- Introductions
  - Value Stream Managers Justin Bern and Dr. Erin Jordan,  
also we have with us today Jonathan Quinsey our Legal  
Specialist on this Project
  - And Chris Montague Breakwell Unit Manager for Clean Water  
Act Permits
- *Now, I would like to turn the meeting over to Erin to talk about our  
agenda for today*

## Agenda

NWPR Vacatur

PSWL White Paper

Schedule



### Erin Jordan

- Thank you for joining us today
- The purpose of this meeting today is to update you on our response to the recent vacatur of Navigable Waters Protection Rule and to continue outreach on the state Surface Water Protection Program, which is effective as of today
- We will discuss progress on the first Surface Water Protection Program white paper - the Protected Surface Waters List - as we prepare for rulemaking
- And, we'll end with a review of the schedule for rulemaking to ensure you know what is coming up

## NWPR Update

U.S. District Court for the District of Arizona vacated the Navigable Waters Protection Rule

Effective immediately in Arizona

ADEQ has had to pivot a number of activities to comply



### Erin Jordan

- As you already likely know, on August 30, 2021, Judge Marquez of the U.S. District Court for the District of Arizona issued an order in *Pascua Yaqui Tribe v. U.S. Environmental Protection Agency* that vacates the Navigable Waters Protection Rule
- *This took immediate effect in Arizona and ADEQ is pivoting our work to comply*

## EPA Response

Interpretation of the order is broad

Pre-2015 WOTUS definition applies nationwide

Two-step rulemaking process is unchanged



### Erin Jordan

- While the vacatur order contained no information about what would be effective in place of the NWPR, the EPA is interpreting the order as applying nationwide and pointed state partners to the guidance titled [“Clean Water Act Jurisdiction Following the U.S. Supreme Court’s Decision in \*Rapanos v. United States\* & \*Carabell v. United States\*”](#) as their interpretation of the currently effective WOTUS definition
- We are referring to this as the pre-2015 definition
- The EPA has also signaled that the agency will continue the two-step repeal and replace process for the NWPR with the intent on establishing a new WOTUS definition next year
- *Justin Bern will now discuss how this is impacting permitting*



## ADEQ Response

### Minimal Impact

- Permits are based on CWA standards

Continue to gather data and evaluate water bodies

Making WOTUS or inconclusive determinations



### Justin Bern

Because of the Surface Water Protection Program that passed last year, little will functionally change “on-the-ground” in Arizona in response to this ruling

- Since the bill required that “for non-WOTUS protected surface waters, the Director shall apply surface water quality standards established as of January 1, 2021, until specifically changed,” Arizona permit limits should remain extremely similar as we snap back to the Pre-2015 regulatory regime
- ADEQ had not yet gone through the process of setting Arizona specific standards through SWPP rulemaking nor had ADEQ applied those standards to any permits
- **Some additional waters will likely come back into the regulatory program,** but the benefit of the SWPP is that the vast majority of our permittees will be insulated from the significant regulatory

whiplash this ruling has caused

- The title of a permit may change but the substance will not be extensively modified.
- The change in Federal definition necessarily requires ADEQ to pivot on which waters will be included in the initial Protected Surface Waters List required to be published in the Arizona Administrative Register within 30 days of September 29th; that list will be published by October 29th.
- *ADEQ will follow EPA guidance on how to implement the current iteration of the WOTUS definition to make jurisdictional decisions*



## SWPP Implementation

Evaluating post vacatur  
options


Provides clarity and  
certainty

Still need to protect Non-  
WOTUS waters



### Justin Bern

- ADEQ is still evaluating how the agency will move forward after NWPR vacatur
- Although the EPA had telegraphed its desire to repeal the NWPR, the court's vacatur dramatically accelerated the need to begin work on the post-NWPR regulatory world
- Certain aspects of the SWPP are still important, as they provide clarity and certainty for our permittees
- Regardless of the changes at the Federal level, ADEQ is still on track to publish the Protected Surface Waters List which will for the first time start to clarify the regulatory status of Arizona surface waters
- ADEQ will continue to engage stakeholders to figure out next steps of implementation.
- *Chris Montegue-Breakwell will discuss impacts on permitting.*



## Permit Impacts

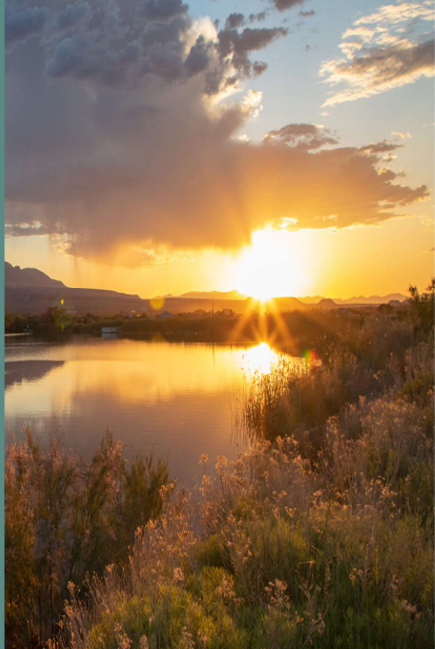
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### General Permits

Scope of waters protected changes

Six general permits

- Modifications contemplated this change
- DMGP, MSGP, Mining MSGP, or CGP permits: No action needed
- PGP or small MS4 permit: must apply for permit as the GPs have been reissued



### Chris MB

- The NWPR vacatur changes the WOTUS definition to the pre-2015 WOTUS rule,
- meaning that waters are determined by significant nexus to a TNW, and ephemeral waters can be WOTUS again.
- Remember! WOTUS are PSWs! So our permits
- The good news: our modification of the six general permits contemplates this change, and no further changes are required once we finalize modifications and issuance this week. If you have existing permit coverage for DMGP, MSGP, Mining MSGP, or CGP, you do not need to do anything. Your current NOI covers you.
- *If you're under the PGP or small MS4 permit, you must apply for permit coverage within 60 days of issuance of those permits as they are reissuances that we do every 5 years.*

ADEQ  
Arizona Department  
of Environmental Quality

## Permit Impacts

### Individual Permits

Minimal change to permit conditions

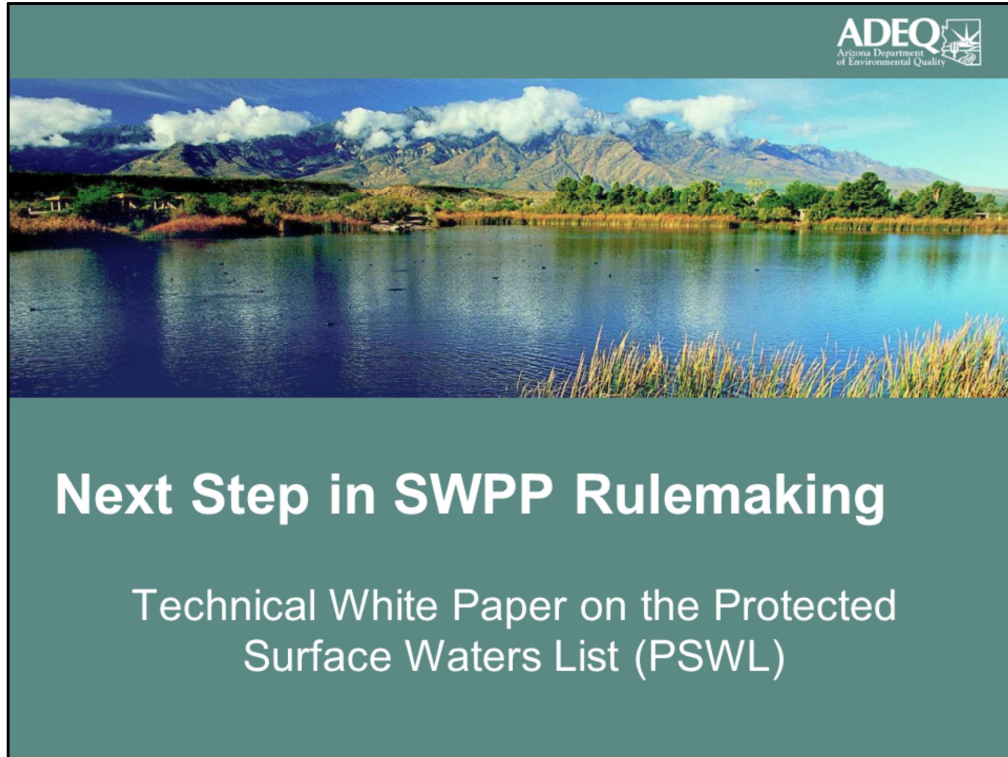
May need modification to change receiving waters

Reissuance or modification may be required for 2020, 2021 issued permits



**Chris MB**

- For individual AZPDES permits, the NWPR vacatur mostly does not change the substance of our permits, though permit modifications may be necessary to change the receiving water for some permits issued during the time the NWPR was in effect.
- ADEQ will reach out to those permittees who need modifications in the next month.
- *And now I hand the meeting back to Jonathan to move back to our state program discussion*



**Jonathan Quinsey**

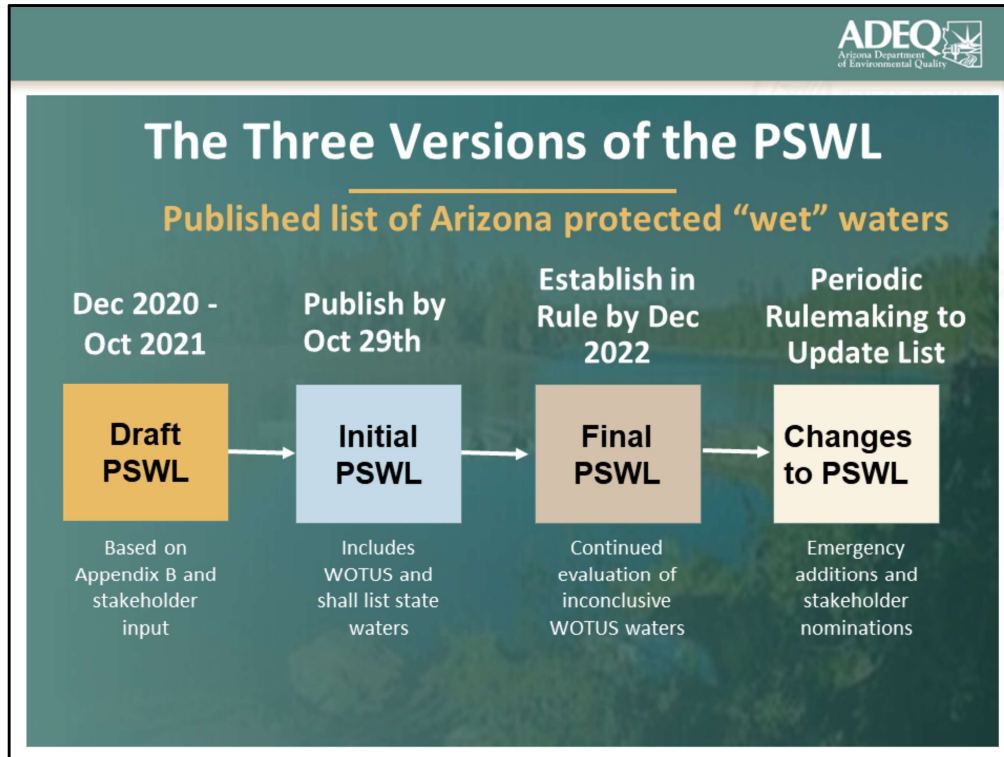


### Jonathan Quinsey

- There are three categories of waters identified by the new state program, the
  - ‘Shall’ list waters,
  - ‘Shall Not’ list waters,
  - and the ‘May’ list waters
- The “Shall” list waters include
  - The 8 major rivers and their perennial and intermittent tributaries. The rivers listed in the House Bill 2691 are the Bill Williams, Colorado, Gila, Little Colorado, Salt, San Pedro, Verde, Santa Cruz.
  - Drinking water sources
  - Public waters used for recreation and fish consumption
  - AND, all waters deemed WOTUS under the federal rule, which, as you know, can change over time.
- The “Shall Not” list waters are

- Most Canals
- Ephemeral segments of waters, except those in the 8 major rivers
- Ornamental lakes and ponds
- Swimming pools, stock tanks, stormwater control features, groundwater
- The “May” list waters are any other state waters not included in the other two lists when “the economic, environmental and social benefits of adding the water outweigh the economic, environmental and social costs of excluding the water from the list.”
- ***Please note, that this is what was approved by the Arizona state legislature. We cannot change the statutory requirements of the list.***





### Jonathan Quinsey

One of the main points we wanted to address today to help alleviate stakeholder confusion is defining the three different versions of the PSWL that have or will exist.


- **Draft PSWL:**  
The Draft PSWL is the version of the list that was developed with stakeholders and used as the basis for HB2691. This version of the PSWL is not legally enforceable but it was used as a starting point to draft HB2691. The Draft PSWL was posted to the ADEQ website on December 5th, 2020 and is still available at [www.azdeq.gov/swpp](http://www.azdeq.gov/swpp).
- **Initial PSWL:**  
HB2691 requires ADEQ to “publish the initial list on the Department’s website and in the Arizona Administrative register within thirty days after the effective date of [HB2691]3.” This iteration will be called the Initial PSWL and will be legally enforceable. HB2691 requires that ADEQ apply “surface water

quality standards established as of January 1, 2021,” with the exclusion of antidegradation, antidegradation criteria, or Outstanding Arizona Water rules, to non-WOTUS protected surface waters on the Initial PSWL.

#### Final PSWL:

The Final PSWL is the version of the list that will be codified in the Arizona Administrative Code to meet the HB2691 requirement that “[n]ot later than December 31, 2022, the Department shall adopt by rule the protected surface waters list.” The Final PSWL will be updated periodically through ADEQ rulemaking actions.

In summary - The Final PSWL is likely going to be different from the Initial PSWL. ADEQ is publishing the Initial PSWL with the best available information we have at the moment. We invite stakeholders to engage the agency with relevant information during the rulemaking process to make sure we include the correct waters in the final PSWL.



## The Initial PSWL


List of waters to be protected prior to December 2022

<p><b>Published by Oct 29, 2021</b></p> <ul style="list-style-type: none"> <li>▪ Shall list waters</li> <li>▪ Only limited changes to the list on ADEQ website</li> <li>▪ WOTUS according to EPA Guidance</li> </ul>	<p><b>Amending the List</b></p> <ul style="list-style-type: none"> <li>▪ Process to be establish in rule</li> <li>▪ Include procedure for Director discretionary changes</li> <li>▪ Must include public process</li> <li>▪ Cost/Benefit analysis required</li> </ul>
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### Jonathan Quinsey

- ADEQ is pivoting our WOTUS evaluation team from making jurisdictional evaluations under the NWPR guidance to making determinations under currently effective EPA guidance. The white paper I'll talk about soon goes into more detail about the specific factors ADEQ is including in our analysis.
- As mentioned earlier ADEQ is on pace to publish the initial PSWL by the October 29th deadline, however, ADEQ will not complete all WOTUS evaluations by October 29th. It's important to note that the Initial PSWL will not include waters that were not previously listed on Appendix B as protected waters with applicable uses and standards. Waters that are found to be WOTUS or qualify for protection under the SWPP but were not previously listed on Appendix B will be added to the final PSWL during rulemaking so that ADEQ has time to do the science necessary to assign those water bodies the appropriate designated uses. I want to mention this again for clarity. The initial PSWL will not include waters that were not previously listed on Appendix B.
- The list will be amended during rulemaking. ADEQ will continue to update stakeholders on information that can be submitted to assist in the listing

process.



## PSWL Paper

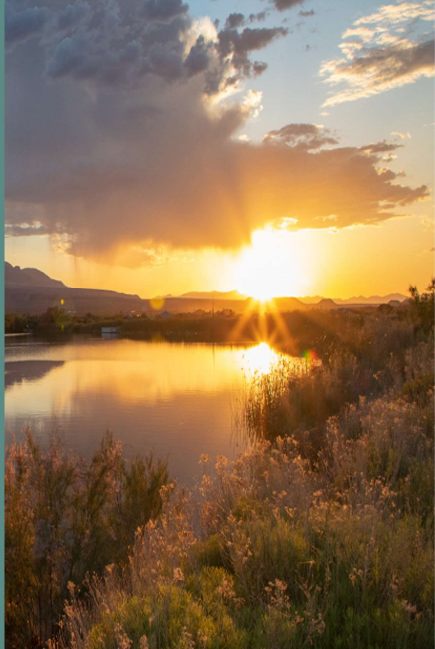
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Purpose:

- Outline of the process to produce final list and future amendments
- Seek input before drafting rule language

Revising Paper

Will email when available for review



### Jonathan Quinsey

- The primary way that ADEQ will be engaging with stakeholders throughout the informal portion of the rulemaking process is by releasing a series of white papers that will serve as problem solving tools to solicit feedback from the public.
- The first of these papers will be released soon, and it addresses broadly:
  - · The legislative and regulatory background of the Arizona State Surface Water Protection Program;
  - · The process ADEQ used to produce the Draft Protected Surface Water List (PSWL);
  - · The differences between the Draft PSWL, the Initial PSWL, and the Final PSWL;
  - · Brief updates on how changes in Federal law will affect the SWPP; and
  - · The process ADEQ will use to produce the Final PSWL during the SWPP rulemaking.



### Jonathan Quinsey

- Here is the general timeline for rulemaking. ADEQ expects the high-level stakeholder process to last until early 2022. We won't be releasing specific rulemaking language until then. The development of key components and the informal rulemaking portion both include white paper review.



## Next Steps

Second White Paper:

- Developing Water Quality Standards in Arizona

Tentative Issue Date: Late October

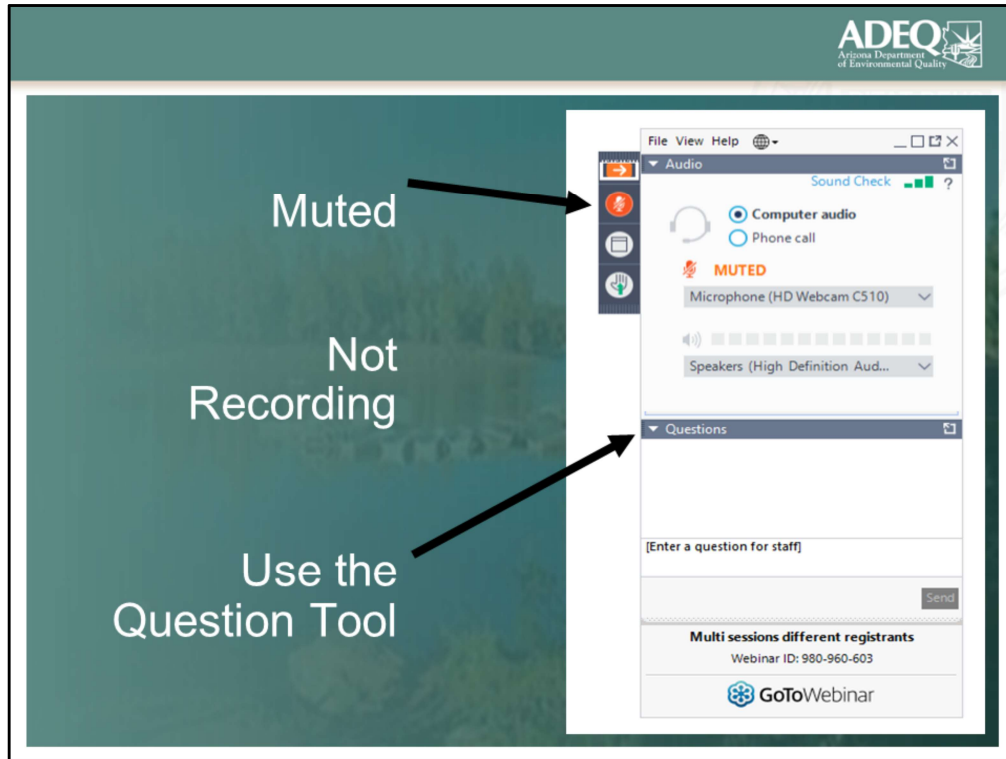
Tentative Meeting Date: Early November



### Jonathan Quinsey

The next white paper that ADEQ is preparing for public consumption addresses the process the agency uses to adopt numeric water quality standards for our SWPP program and Federal program. This paper will be highly technical and provide a deep dive into the way we set criteria to protect both human health and aquatic life.

To finish off the presentation for today, I'm going to kick it over to David Lelsz.



David Lelsz

**(Slow down! Pause after making a key point! Repeat/restate key points! Breath! Bring in levity when you are able! )**

- Question tools
- Permits First
- Questions on the White Paper

# For More Information:

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Program Manager

(602) 771-4651

[Lelsz.David@azdeq.gov](mailto:Lelsz.David@azdeq.gov)

<http://www.azdeq.gov/SWPP>

## David Lelsz

- Thank you for taking time out of your day to meet with us on SWPP Implementation
- *Introduce the evaluation slide*

## Post Webinar Meeting Evaluation

Share your thoughts regarding  
virtual meetings.

20

### David Lelsz

- Auto email from GTW with survey questions sent at close of webinar to all participants.
- *Sign off and Thank You!*